

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
Wisconsin Electric Power Company's	)	Case No. U-16367
renewable energy reconciliation	)	
proceeding for the 12-month period	)	
<u>ended December 31, 2010.</u>	)	

**NOTICE OF PROPOSAL FOR DECISION**

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on February 21, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before March 13, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before March 27, 2012. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING  
SYSTEM  
For the Michigan Public Service Commission

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Sharon L. Feldman  
Administrative Law Judge

February 21, 2012  
Lansing, Michigan

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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**PROPOSAL FOR DECISION**

**I.**

**PROCEDURAL HISTORY**

This PFD addresses Wisconsin Electric Power Company's renewable energy reconciliation for the calendar year 2010, filed under section 49 of 2008 PA 295 (Act 295), MCL 460.1049. The company's March 30, 2011 application indicated that the company was in compliance with Act 295, and identified a 2010 regulatory liability of approximately \$1.39 million. The application was accompanied by the testimony and exhibit of Thomas P. Lorden.

The docket in this case reflects that on May 19, 2011, Empire Iron Mining Partnership and Tilden Mining Company L.C. (collectively, the Mines) filed a motion to consolidate this case with Case No. U-16034-R, Wisconsin Electric's PSCR reconciliation for same time period. At the May 26, 2011 prehearing conference held in Case No. U-16034-R, Administrative Law Judge Mark D. Eyster denied the motion to

consolidate. Following the Mines' June 9, 2011 application for leave to appeal, the Commission issued an order denying consolidation on July 26, 2011.

At the July 28, 2011 prehearing conference in this renewable energy reconciliation case: WEPCo, Staff, and the Mines appeared; the Mines' petition to intervene was granted without objection; and a schedule was established by agreement of the parties. In accordance with the established schedule, Staff filed the testimony of Katie Trachsel and the Mines filed the testimony and exhibits of James W. Collins on October 7, 2011. Also according to the schedule, WEPCo filed the rebuttal testimony of Mr. Lorden and Staff filed the rebuttal testimony of Jesse Harlow on October 28, 2011. At the December 8, 2011 evidentiary hearing, the prefiled testimony and exhibits of all witnesses were bound into the record by agreement of the parties, without the need for the witnesses to appear. All parties filed briefs on January 6, 2012; WEPCo and the Mines filed reply briefs on January 20, 2012.

The evidentiary record is contained in 78 pages of transcribed testimony and 11 exhibits.

## II.

### **OVERVIEW OF THE RECORD AND POSITIONS OF THE PARTIES**

This section first reviews the initial and rebuttal testimony of the parties, followed by a review of the positions of the parties as presented in their briefs.

## WEPCo

In his initial testimony, Mr. Lorden presented the company's calculations of its renewable energy costs and surcharge revenues for 2010, shown in his Exhibit A-1.<sup>1</sup>

As shown on page 1 of Exhibit A-1, the company identified a total cost of renewable energy of \$649,880 for 2010, with \$570,640 of that amount to be recovered through the PSCR using a transfer price of \$50.05, resulting in an incremental cost of compliance of \$79,240 for 2010. The company also indicated actual surcharge revenues for 2010 of \$1,464,451, resulting in a regulatory liability of \$1,386,425 including interest through December 31, 2010.

Page 1 of Exhibit A-1 also shows planned costs and revenues, and booked costs and revenues, with the difference between the booked and actual incremental cost of compliance attributable to the company's error in initially using a transfer price of \$50.50 rather than \$50.05. Mr. Lorden indicated the company would correct its books to reflect the identified transfer price and actual incremental costs of compliance by March of 2011.

Mr. Lorden testified that during 2010, the company followed the renewable energy plan approved in Case No. U-15812, and is not proposing any changes to that plan in this case. He further indicated that the company intended to review its plan and identify the need for changes in its plan case filing, Case No. U-16588.

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<sup>1</sup> Mr. Lorden's testimony is transcribed at 2 Tr 16-25.

## Staff

Ms. Trachsel testified that Staff does not recommend approval of the company's reconciliation.<sup>2</sup> She testified that the source of both the renewable energy and the credits in the company's filing is the Barton Wind project, which is located in Iowa and does not meet the location requirements of section 29 of Act 295, or fit within one of the exceptions. She also referenced Case No. U-16588, and Mr. Collins's testimony in that case, indicating that WEPCo's PPA with Barton Wind should have been submitted to the Commission for approval. She recommended that the \$650,000 costs for this project allocated to Michigan be disallowed, and that no renewable energy credits (or RECs) be certified for the energy generated by the project. Further, she recommended that the company be required to file a revised reconciliation.

## The Mines

Mr. Collins testified on behalf of the Mines.<sup>3</sup> He summarized his recommendations as follows:

1. The total booked renewable energy costs of \$654,437 associated with WEPCo's 2010 power purchase agreement ("PPA") should be removed from WEPCo's 2010 renewable energy reconciliation proceeding.
2. The Michigan Public Service Commission . . . should establish a 2010 transfer price level of \$33.50/MWh.
3. Removing all 2010 PPA renewable energy from WEPCo's 2010 renewable energy reconciliation proceeding results in 2010 related transfer price revenue of \$0.

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<sup>2</sup> Ms. Trachsel's testimony is transcribed at 2 Tr 59-66.

<sup>3</sup> Mr. Collins's testimony is transcribed at 2 Tr 35-57.

4. If the MPSC does not remove WEPCo's 2010 PPA from the 2010 renewable energy reconciliation proceeding, the 2010 transfer price revenue collected should be \$384,625.
5. Excluding WEPCo's 2010 PPA costs and associated transfer price revenue results in an end-of-year 2010 renewable energy regulatory liability balance of \$1,460,177.
6. After excluding the Michigan allocated renewable energy credits ("RECs") associated with the 2010 PPA, WEPCo is projected to have excess RECs at the end of 2010 of 143,555. WEPCo's adjusted REC level is in compliance with Public Act 295 ("PA 295").
7. WEPCo's renewable energy surcharges should be reduced to ensure that WEPCo does not incur an unreasonable regulatory liability balance level on a going-forward basis.
8. Current 2011 and 2012 LMP projections result in a forecasted 2011 transfer price of \$32.23/MWh and 2012 transfer price of \$34.23/MWh.<sup>4</sup>

Regarding the Barton Wind PPA, Mr. Collins's principal recommendation is that the expenses be disallowed because WEPCo did not obtain Commission approval of the PPA, resulting in a 2010 regulatory liability of \$1,458,902 plus interest, as shown in Exhibit MIN-4. In the alternative, he recommended that the transfer price for the PPA be reduced. His Exhibits MIN-1 and MIN-2 contain WEPCo's transfer price calculations from Case Nos. U-15812 and U-16588, and his Exhibit MIN-3 shows the use of his recommended updated transfer price of \$33.50 per MWh to determine the transfer price revenue associated with the Barton Wind project. His reconciliation statement using the revised transfer price, with the resulting regulatory liability of \$1,190,157 with interest through December 2010, is shown in Exhibit MIN-5.

Mr. Collins further testified that in view of what he characterized as a large regulatory liability balance,<sup>5</sup> the company's renewable energy surcharges should be

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<sup>4</sup> See 2 Tr 39.

reduced. He reviewed WEPCo's existing REC balance, including the information presented in his Exhibit MIN-6, in recommending the revised surcharges shown on his Exhibit MIN-7. He testified that the reduced surcharges, in combination with his recommendation that WEPCo purchase unbundled RECs, would allow WEPCo to fully comply with the Act 295 standards and still retain a regulatory liability balance by 2029.

#### WEPCo rebuttal

In rebuttal to Mr. Collins's testimony, Mr. Lorden testified that the 2010 transfer prices from Case No. U-15812 used in the company's reconciliation should not be reduced, citing the Commission's July 26, 2011 order in this docket noted above.<sup>6</sup> He also disagreed that the surcharge level should be reduced, arguing that caps on the surcharge level already restrict the company's ability to achieve Act 295 targets, and that adjustments to the surcharge level are more appropriately addressed in the company's biennial review.

In rebuttal to both Mr. Collins's and Ms. Trachsel's testimony, Mr. Lorden testified that the company does not agree that the Barton Wind costs should be disallowed. He testified that the company proposes to reallocate to Wisconsin the share of Barton Wind energy and renewable energy credits that has otherwise been allocated to Michigan, and replace it with "Michigan-eligible" energy and the associated credits from the Blue Sky/Green Field Wind project. He testified that this substitution would not change the renewable energy credits or costs from those presented in the plan approved in Case No. U-15812. Should the Commission reject this proposal, Mr. Lorden testified, the

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<sup>5</sup> See 2 Tr 50.

<sup>6</sup> Mr. Lorden's rebuttal testimony is transcribed at 2 Tr 26-32.

company proposes to sell the 11,401 Barton Wind renewable energy credits, and purchase credits from a qualified Michigan source. This proposal, he testified, would also not affect the cost of the incremental renewable resource or the transfer price.

In response to Ms. Trachsel's testimony recommending that the company file a revised reconciliation, he testified that if the Commission adopts one of his proposals, there would be no need to refile.

#### Staff rebuttal

Mr. Harlow's rebuttal testimony for Staff addressed Mr. Collins's recommendations that the Commission revise the transfer price applicable to the Barton Wind project if it decides to allow the PPA expenses in the reconciliation, and that the Commission should reduce the authorized surcharge.<sup>7</sup> He testified that if the Commission agrees with Staff's recommendation to remove the 2010 PPA expenses from the reconciliation, the 2010 costs transferred to the PSCR would be \$0.

Mr. Harlow further testified that if 2011 and 2012 transfer prices are set in this proceeding, they should not be applied to already-approved contracts with a Commission-approved transfer price. He testified that an updated transfer price should only be used for new renewable resources. Specifically addressing the Glacier Hills Wind Farm, he explained that the Wisconsin Public Service Commission approved WEPCo's Glacier Hills contract on January 23, 2010, as shown in Exhibit S-1, and he recommended that the Commission make a determination that the project is approved for compliance with Act 295 based on the Wisconsin approval. Because the Wisconsin

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<sup>7</sup> Mr. Harlow's testimony is transcribed at 2 Tr 67-76.

Public Service Commission approved the project on January 23, 2010, he testified that the transfer price schedule in effect at that time, the transfer price schedule approved in Case No. U-15812, should be used. He further testified that the resulting levelized \$80.41 per MWh transfer price is reasonable, presenting comparisons to Detroit Edison and Consumers Energy transfer price schedules in his Exhibits S-2 and S-3.

Finally, he disagreed with Mr. Collins's recommendation that the Commission reduce the surcharge, also expressing a concern that reduced surcharge revenues would impede the company's ability to achieve compliance with Act 295.

### Briefs

In its briefs, WEPCo asks the Commission to approve the company's reconciliation as filed, with a \$1,385,490.65 regulatory liability including carrying costs through December 31, 2010, and to permit it to substitute Michigan-eligible renewable energy and RECs from its Blue Sky/Green Field project for the Barton Wind energy. WEPCo opposes Staff's and the Mines' proposals to disallow the Barton Wind costs for 2010, opposes Staff's proposal that it refile its reconciliation, and opposes the Mines' proposals to revise the transfer prices and reduce the surcharge.

Staff's initial brief asks the Commission to disallow \$650,000 in Barton Wind PPA expenses, with no associated transfer cost to the PSCR, direct the company to file an updated renewable energy plan and 2010 reconciliation, affirm that the appropriate transfer price for the 2012 Glacier Hills Wind project is \$80.41/ MWh, and reject the Mines' recommendations to adjust previously established 2011 and 2012 transfer prices and to reduce the surcharge.

The positions of the parties as presented in their briefs are generally consistent with the testimony they offered, and are discussed in more detail below.

### III.

#### **DISCUSSION**

Section 49 governs this reconciliation proceeding, and provides the following direction to the Commission in subsection 3:

The commission shall reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the electric provider's plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do all of the following:

- (a) Make a determination of an electric provider's compliance with the renewable energy standards, subject to section 31.
- (b) Adjust the revenue recovery mechanism for the incremental costs of compliance. The commission shall ensure that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45. The commission shall ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.
- (c) Establish the price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as outlined in section 47(2)(b)(iv).
- (d) Adjust, if needed, the minimum balance of accumulated reserve funds established under section 21.<sup>8</sup>

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<sup>8</sup> See MCL 460.1049(3)

There is no dispute among the parties that WEPCo is currently in compliance with the renewable energy portfolio standards of Act 295. Instead, the parties dispute whether costs associated with the Barton Wind project can be included in the 2010 reconciliation, whether plan amendments can be made in this proceeding, and whether further filings should be required of WEPCo. The Mines further argue that revised transfer prices should be established in this proceeding. The Barton Wind project is discussed in section A below; section B discusses issues relating to the transfer prices; section C discusses the Mines' request to reduce the renewable energy surcharges.

A. Barton Wind

The company's 2010 renewable energy costs are entirely attributable to the Barton Wind project, which the parties now agree is not eligible for cost recovery as a renewable resource under section 29 of Act 295. The company argues that the energy allocated to Michigan from the Barton Wind can be replaced with energy (and renewable energy credits) from another WEPCo project, the Blue Sky/Green Field Wind project.<sup>9</sup> Should the Commission reject the exchange, WEPCo argues, then it will recover the entire cost of energy from the Barton Wind PPA through the PSCR, using system-wide cost allocations, and will still have to acquire Michigan-eligible RECs at market prices potentially higher than the price at which the credits are sold, increasing the total energy cost to customers.<sup>10</sup>

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<sup>9</sup> The Barton Wind project is a PPA; the Blue Sky/Green Field Wind project appears to be a company-owned project. See Case No. U-16231, April 13, 2010 order, setting depreciation rates for "Blue Sky".

<sup>10</sup> See WEPCo brief, pages 13-18, citing e.g. the Commission's December 6, 2011 decision in WEPCo's 2009 PSCR reconciliation, Case No. U-15664-R.

WEPCo discusses its amended plan filing for 2011 in Case No. U-16588, asserting that its 2011 plan proposes substituting the Blue Sky/Green Field wind for the 2010 (Barton) PPA, and also relies on “2012 Wind” and “2015 Wind” (“2013 Wind” in the original plan approved in Case No. U-15812). WEPCo argues that if the Commission accepts its proposed swap, it will not require a revised plan or reconciliation filing as proposed by Staff.

Staff and the Mines argue that the costs of the Barton Wind should be excluded from this reconciliation. While Staff would allow the company to amend its renewable energy plan and refile its 2010 reconciliation,<sup>11</sup> the Mines argue that the plan amendment and revised reconciliation filing is an inappropriate solution. To the Mines, the Blue Sky/Green Field project has not been reviewed and approved for Act 295 compliance purposes, and the costs of renewable energy and RECs from the utility-owned Blue Sky/Green Field project are not the same as the costs of renewable energy and RECs from the 2010 Barton PPA.<sup>12</sup> The Mines also dispute the company’s claim that Michigan ratepayers will pay the full allocated cost of the Barton Wind PPA through the PSCR, if the company’s proposal is rejected.

WEPCo further argues (in its reply brief) that a “swap” such as this one was contemplated in its plan, and therefore should be considered already approved. In support of this argument, WEPCo cites the settlement agreement approved in its initial plan case, Case No. U-15812, as follows:

In the Initial RE Plan . . . Mr. Lorden testified that “[i]f any new renewable energy systems are deemed not to comply with Act 295, Sec. 29, the

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<sup>11</sup> See Staff brief, page 11.

<sup>12</sup> See the Mines’ initial brief, pages 14-15, and reply brief, page 5.

company will replace the RECs from existing renewable systems.” (See April 22, 2009 hearing transcript in Case No. U-15812, 2 Tr 13) The Settlement Agreement in Case No. U-15812 stipulated that the “Company’s proposed Renewable Energy Plan, as set forth in the testimony of Tomas P. Lorden satisfies the requirements of MCL 460.1021, is reasonable and prudent . . . .” (See May 26, 2009 Order in Case No. U-15812, Attachment A, ¶9.a) The Commission approved the Settlement Agreement, finding that it was reasonable and in the public interest. (May 26, 2009 Order in Case No. U-15812, page 2) Thus, the replacement of any sources of RE that were not eligible for Michigan REC status, with those that were eligible for Michigan REC status, was: (i) a contingency recognized and addressed in the Initial RE Plan as set forth in Mr. Lorden’s testimony; (ii) agreed to by the parties; and (iii) approved by the Commission. Neither an updated RE Plan nor a revised 2010 RE reconciliation is necessary, therefore, because the possibility of replacing RE credits was contemplated in the approved Initial Re Plan.<sup>13</sup>

This PFD concludes that in order to recover the 2010 costs associated with the Blue Sky/Green Field Wind project, or the costs of any unbundled renewable energy credits for the year 2010, WEPCo needed to amend its renewable energy plan. Although a plan amendment can be combined with a reconciliation, WEPCo’s filing in this case makes clear that it was not seeking to amend its renewable energy plan as part of this case.<sup>14</sup> Section 49 of Act 295 directs the Commission to “reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected *according to the electric provider’s plan for compliance*.”<sup>15</sup> Since the Blue Sky/Green Field Wind project was not part of the company’s plan for compliance with Act 295, the costs associated with that project cannot be considered in this 2010 reconciliation.

WEPCo’s reliance on Mr. Lorden’s testimony in Case No. U-15812 regarding the company’s intent to substitute additional RECs in the event its proposed projects failed

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<sup>13</sup> See WEPCo reply brief, pages 15-16.

<sup>14</sup> See Lorden, 2 Tr 24.

<sup>15</sup> MCL 460.1049(3), emphasis added.

to qualify under Act 295 was raised for the first time in its reply brief. A reasonable construction of the above-quoted testimony that WEPCo relies on, viewed in its context of a renewable energy plan case, is that the company still intended to follow one of the numerous statutory avenues for amending its plan. Mr. Lorden's testimony does not clearly establish that the parties or the Commission provided blanket advance approval for the exchange proposed by WEPCo in this proceeding.

As noted above, WEPCo also argues that if the Barton Wind costs are disallowed in this proceeding, ratepayers will end up paying more in total through system-wide allocations of the company's renewable energy costs in PSCR proceedings. Although WEPCo argues that such cost allocations will provide full PSCR recovery of the entirety of the Barton Wind costs allocated to Michigan if the Commission rejects its proposed swap, the Mines dispute this claim. Since this is not a PSCR proceeding, this PFD concludes that such determinations are beyond the scope of this case.

For these reasons, this PFD recommends that the Commission reject WEPCo's proposed swap for 2010, and disallow the Barton Wind costs from the 2010 reconciliation. Consistent with Staff's recommendation, the company should be required to file a revised reconciliation containing the appropriate revisions to Exhibit A-1.

A further dispute between the parties arises regarding the "transfer price" that should be used for the replacement energy, if the Commission approves swap. This is discussed in section B below.

## B. Transfer Prices

Section 47 of Act 295 requires the Commission annually to establish the transfer price, and section 49 of Act 295 requires the Commission to set the transfer price in the reconciliation proceeding. Section 47 of Act 295 further indicates that the Commission must consider a multitude of factors in setting the transfer price:

In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing.<sup>16</sup>

In its “Temporary Order” implementing Act 295 in Case No. U-15800, the Commission addressed the transfer price and explained as follows in interpreting Act 295:

Section 47 requires the Commission to annually set the price per megawatt hour to be transferred to retail customers through the regulated provider’s power supply cost recovery (PSCR) clause. Section 49 requires the transfer price to be established in the context of an annual renewable cost reconciliation proceeding. Because the 2009 renewable energy plan proceeding will precede the first annual renewable energy reconciliation, the plan filings will need to estimate the transfer prices over the 20-year plan period. *All renewable engineering, procurement, and construction contracts, or contracts for renewable energy systems that have been developed by third parties for transfer of ownership to an electric provider, that have been reviewed and approved by the Commission in a particular year will have the transfer price established as a floor for the lifecycle of the project. Provider-owned projects will have transfer prices set in vintages. Doing so ensures that the economic viability of projects that have been committed to will not be jeopardized by transfer prices that change in future years.*

In a renewable energy plan, PSCR transfer revenues are subtracted from the total cost of compliance, as determined by Section 47(2)(a). The transfer price is a primary determinant of the incremental cost of compliance. The PSCR transfer price:

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<sup>16</sup> MCL 460.1047(2)(b)(iv).

- (a) is unique to each provider;
- (b) reflects the value of long-term capacity and energy;
- (c) is not the current MISO market price of energy, but may use historical MISO prices as a starting point for a 20-year projection of the value of renewable energy and capacity;
- (d) need not be tied to the avoided price of a new conventional coal-fired facility; and
- (e) [may reflect] other factors determined relevant by the Commission.

The transfer price may be separately calculated for differing renewable technologies to reflect availability and the value of capacity; e.g., the capacity value of a landfill gas facility may differ from the capacity value of a wind farm.

The PSCR transfer price may be adjusted by an hourly distribution curve to yield an hourly price per megawatt hour for the 8,760 hours per year.<sup>17</sup>

Subsequently, in addressing the rehearing record in Detroit Edison's renewable energy plan case, Case No. U-15806, the Commission addressed Staff's request for clarification of the U-15800 order as follows:

[T]he Staff notes that while the June 2, 2009 order in this case, and the December 4, 2008 order in Case No. U-15800 addressed certain aspects of the transfer price, the issue of how the transfer price is to be used in the case of third-party PPA has not been specifically addressed. The Staff therefore urges the Commission to clarify that *at the time any PPA is approved by the Commission, the schedule of transfer prices most recently approved shall become the floor price for PSCR recovery*. For each contract year, if the most recently approved annual transfer price is higher than the schedule of transfer prices for a particular contract, then the most recently approved annual transfer price would be recovered via the PSCR process. However, in the event that the contract price is less than the transfer price, the contract price would be the recoverable PSCR cost. This method would be applicable to renewable engineering, procurement, and construction contracts, or contracts for renewable energy systems that have been developed by third parties for transfer of ownership to an electric provider, provider-owned projects, and third party PPAs.

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<sup>17</sup> See December 4, 2008 order, Case No. U-15800, pages 25-26, emphasis added.

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*The Commission agrees with the Staff's clarification.*<sup>18</sup>

The parties have several disputes regarding transfer prices in this proceeding, as discussed below.

#### Barton Wind transfer price

The Mines argue that if the Commission approves the Barton Wind PPA as a renewable energy resource for 2010, the Commission should update the transfer prices set in Case No. U-15812, and use the updated value of \$33.50 per MWh rather than the \$50.05 amount the company uses. In its July 26, 2011 decision in this docket and Case No. U-16034-R, the Commission made clear that once a transfer price is set for a project, that transfer price is to be used for the life of the project. Although the Mines disagree with the Commission's decision, this PFD concludes that the matter has been resolved and does not specifically address their arguments that the Commission's decision is erroneous.<sup>19</sup>

Additionally, however, the Mines argue that the Commission's approval of the settlement agreement in the company's plan case, Case No. U-15812, did not establish a transfer price for the Barton Wind PPA.<sup>20</sup>

To address this argument, it is first appropriate to note the context in which this dispute over the transfer price arises. As noted above, this PFD recommends that the Commission reject WEPCo's request to include Barton Wind expenses in its 2010

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<sup>18</sup> See August 25, 2009 order, Case No. U15806, pages 11-12, emphasis added.

<sup>19</sup> See the Mines' initial brief, pages 16-24.

<sup>20</sup> See the Mines' initial brief, page 22, pages 30-32; reply brief, page

reconciliation, based on the parties' acknowledgement that the location of the project does not meet the requirements of section 29 of Act 295, and because the company did not obtain Commission approval under section 37 of Act 295. Given this PFD's recommendation that the Barton Wind expenses should be disallowed, the question of the transfer price for energy from the Barton Wind project thus becomes moot.

Nonetheless, WEPCo has not established that the Commission's order in Case No. U-15812 established a transfer price for the Barton Wind PPA. There is no doubt that the plan and transfer price schedule were approved in that case. WEPCo assumes that because the company's plan included a transfer price schedule, as shown in Exhibit MIN-1, it necessarily applies to the Barton Wind PPA because the company obtained energy from that PPA during 2010. Exhibit MIN-1 page 3 shows only "2010 PPA" as a new resource, with no reference to a particular PPA. As quoted above, the Commission's orders in Case Nos. U-15806 and U-15800 make clear that the transfer price attaches to a PPA as a floor for the lifecycle of the project when the PPA is reviewed and approved by the Commission. At that point, the most-recently approved transfer price schedule is used to assign the lifecycle transfer price to the project. Had the Commission approved the Barton Wind PPA under section 37 of Act 295, it would have had the opportunity to set a transfer price "floor" for the life of the project. Since the Barton Wind PPA was apparently not submitted for Commission approval, no "transfer price" has been attached to the PPA.<sup>21</sup>

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<sup>21</sup> See Staff brief, page 9 ("Because this PPA does not qualify under 2008 PA 295, the transfer price established for WEPCo's renewable energy plan cannot be used.")

### Blue Sky/Green Field transfer price

WEPCo argues that the Commission in this reconciliation can substitute the Blue Sky/Green Field Wind project for the Barton Wind project, (or unbundled RECs) and retain the same costs and transfer price, without the need for a revised filing. As discussed above, this PFD recommends that the Commission reject that request. Additionally, when it comes to the “transfer price” piece of that request, this PFD notes that the company has not obtained Commission approval of its Barton Wind PPA, and therefore no transfer price has been established for this project to keep in place. Likewise, since the company has apparently not sought review or approval of the Blue Sky/Green Field Wind project costs under Act 295, no transfer price has been established for this project. Since the company’s reconciliation did not seek to amend its plan to include this resource, this PFD concludes that it is not appropriate to set a transfer price for this project until the company files a plan amendment in which the project can be reviewed by the Commission.

### Glacier Hills transfer price

Apparently as a result of Mr. Collins’s testimony for the Mines, a dispute has also arisen regarding the transfer price for the Glacier Hills Wind project, which the parties seem to agree is reflected in the company’s initial plan as “2012 Wind.”

As noted above, the Mines recommend that the Commission set a transfer price in this proceeding of \$32.23 per MWh for 2011 and \$34.23 per MWh 2012.<sup>22</sup> In rebuttal testimony, Mr. Harlow testified that even if transfer prices are set for the future, the

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<sup>22</sup> See Collins, 2 Tr 54; see the Mines’ initial brief, page 29.

updated transfer prices should not be applied to already-approved contracts that have a Commission approved transfer price schedule. He seemed to identify the Glacier Hills Wind Farm project as an example of a contract that already has a Commission approved transfer price schedule,<sup>23</sup> but made clear that Staff is asking the Commission to determine that the currently-approved transfer price schedule should be applied to the Glacier Hills Wind project, resulting in a levelized transfer price of \$80.41.<sup>24</sup>

As shown in Exhibit S-1, the Glacier Hills Wind project is a wind farm the company is constructing. Mr. Halow's testimony first notes that unlike Consumers Energy and Detroit Edison, WEPCo does not have 1 million customers in the state, and therefore is not governed by section 33 of Act 295, which requires prior approval of contracts for engineering, procurement and construction of renewable energy systems. To eliminate unnecessary administrative burdens on the Commission, Mr. Harlow urged the Commission to determine in this proceeding that the Glacier Hills project is approved for compliance with Act 295 based on the Wisconsin agency's approval, and further to apply to that project the transfer price schedule in effect on the date of the Wisconsin agency's approval, January 23, 2010.

Acknowledging that the Commission has indicated that it will not revise transfer prices established for projects, the Mines argue that the Commission has not reviewed or approved the Glacier Hills project, and thus does not have an established transfer price floor for the project.<sup>25</sup>

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<sup>23</sup> See 2 Tr 72.

<sup>24</sup> See 2 Tr 73.

<sup>25</sup> See the Mines' initial brief, pages 29-34.

Consistent with the foregoing discussion, this PFD finds that because the company has not presented any of the expenses associated with the Glacier Hills Wind project for review by this Commission in this reconciliation, it is not appropriate to recommend approval of the project or to attach a transfer price. As the Mines argue, review by the Wisconsin Public Service Commission is not a substitute for MPSC review and approval. That the Commission is obligated to set a transfer price schedule under section 49 is discussed further in the following subsection, but that obligation does not encompass review or approval of a project outside the scope of the company's application. Even though section 33 does not require the company to submit engineering, procurement, or construction contracts for review in advance of a reconciliation, the Commission can review such expenses in the course of a renewable energy plan or reconciliation and determine then what transfer prices attach. Likewise, the company can request approval of a specific project and project costs in a plan case and the Commission can indicate the applicable transfer price.

#### Section 49 transfer price schedule

As noted at the beginning of this section, Act 295 requires the Commission to set transfer prices in the reconciliation. Here, WEPCo did not propose transfer prices in its reconciliation filing. Only the Mines proposed to set a revised schedule of transfer prices based on recent data.<sup>26</sup> WEPCo and Staff address the application of these transfer prices only to identified projects, as discussed above, and not in the context of the Commission's obligation to set transfer prices under section 49 of Act 295.

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<sup>26</sup> See Collins, 2 Tr 54.

In its July order in this docket and Case No. U-16034-R, the Commission held:

This is the third time that the Commission has addressed the issue of whether the transfer price may be applied retroactively. Again, the Commission declines to do so.

\* \* \* \*

The transfer price is not subject to change in a PSCR reconciliation. It may be changed in an RE reconciliation, and the new price will be applied going forward. The RE reconciliation does not constitute a true-up of the transfer price. Rather, the transfer price will be set in each reconciliation (and, in this matter, was set in the original plan case) on the basis of the elements that are required to be considered by the Commission under Section 47(2)(b)(iv) of Act 295, MCL 460.1047(2)(b)(iv). If a transfer price changes in an RE reconciliation, or if the total amount of actual renewable energy utilized by the utility during the plan year changes, those changes will result in an adjustment in the next PSCR reconciliation in the same way that many other mid-period changes result in adjustments.<sup>27</sup>

Section 47(2)(b)(iv) of Act 295 requires the Commission to consider at least the following elements in establishing the transfer price: “projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing.”

Mr. Collins’s testimony identifies only the “on-peak” and “off-peak” LMP prices as the basis for his calculation, although he seemed to be updating an earlier calculation by the company. No party presented any comprehensive review of the statutorily required elements. This PFD thus concludes that the record in this case does not contain sufficient information for the Commission to establish transfer prices as required by section 47 of Act 295. Therefore, this PFD recommends that the Commission direct WEPCo to file for revised transfer prices to be applied to projects approved between now and the next reconciliation, with evidence as to each of the statutorily required

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<sup>27</sup> July 26, 2011 order, Case Nos. U-16367 and U-16034-R, pages 7-8.

elements. The revised filing should be made in this docket, with the opportunity for further evidentiary hearings if the parties do not agree with the company's proposal.

C. Surcharge level

Based on their arguments that WEPCo has a regulatory liability balance of \$1.46 million for 2010, the Mines further argue that the renewable energy surcharge should be reduced. Mr. Collins proposed a reduction for all classes as shown in Exhibit MIN-7. Staff and the company oppose the request, expressing a concern that reduced revenue collection would make it more difficult for WEPCo to achieve compliance with Act 295 in later years. The Mines respond that their proposal that WEPCo purchase unbundled RECs would permit WEPCo to achieve compliance with the Act 295 requirements and retain a regulatory liability balance.

This PFD recommends no adjustment in the surcharge at this point. Act 295 clearly contemplates the accumulation of reserves in advance of expenses. This record does not contain a comprehensive review of the company's plans or the reasonableness and prudence thereof, on which a determination of the net present value of the incremental cost of compliance can be made. Therefore, this PFD accepts Mr. Lorden's analysis, that it is not appropriate to consider a reduction in the surcharge on this record, but the appropriate amount of the surcharge can be best evaluated in the company's biennial plan reviews, or in a plan amendment proceeding.

#### IV.

#### **CONCLUSION**

All contentions of the parties not specifically addressed and determined herein are rejected, the Administrative Law Judge having given full consideration to all evidence of record and arguments in arriving at the findings and conclusions set forth in this Proposal for Decision. Based on the foregoing discussion and findings, this PFD recommends that the Commission find the following:

1. WEPCo is currently in compliance with Act 295;
2. WEPCo collected \$1,464,451 in surcharge revenue in 2010, as shown in Exhibit A-1;
3. The expenses and potential credits associated with the Barton Wind PPA should be disallowed because the parties agree that the location of the project does not meet the requirements of section 29 of Act 295;
4. It is not appropriate in this reconciliation to substitute additional resources for 2010 that have not been identified in a plan or plan amendment, and have not been previously reviewed by the Commission;
5. The resulting regulatory liability for 2010 should be \$1,460,177 including interest through December 31, 2010 as calculated in Exhibit MIN-4;
6. Staff's request that the company file a revised reconciliation reflecting this regulatory liability is reasonable;

7. The Commission does not have an adequate record on which to base the establishment of a revised transfer price schedule as required under section 49 of Act 295 for future renewable energy resources, and should direct the company to file in this docket an application for a revised transfer price schedule, showing consideration of all the statutorily required elements, with an opportunity for an evidentiary hearing if the parties disagree;
8. The Commission should decline to approve the Glacier Hills project or to recognize a transfer price for that project on this record, but should wait until the company files for approval of any of the costs associated with that project, at which time a transfer price would be established for the life of the project, based on the transfer price schedule then in effect; and
9. No reduction in the surcharge should be made at this time.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
For the Michigan Public Service Commission

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Sharon L. Feldman  
Administrative Law Judge

February 21, 2012  
Lansing, Michigan  
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